

EXHIBIT B

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America, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AUDATEX NORTH AMERICA, INC.,

Plaintiff,

v.

MITCHELL INTERNATIONAL, INC.,

Defendant.

) Case No. 13cv1523-BEN (BLM)

) **JURY TRIAL DEMANDED**

) **PLAINTIFF AUDATEX NORTH**
) **AMERICA, INC.'S AMENDED**
) **DISCLOSURE OF ASSERTED**
) **CLAIMS AND PRELIMINARY**
) **INFRINGEMENT CONTENTIONS**
) **UNDER PATENT LOCAL RULES**
) **3.1 AND 3.2**

I. AUDATEX’S AMENDED INFRINGEMENT CLAIM CHARTS AND DISCLOSURES FOR U.S. PATENT NOS. 7,912,740 B2, 8,200,513 B2 AND 8,468,038 B2

Pursuant to the Court’s Scheduling Order, dated February 5, 2014 (D.N. 42), as modified by the Court’s Order dated May 28, 2014 (D.N. 61), and the Patent Local Rules for the Southern District of California, Plaintiff Audatex North America, Inc. (“Audatex”), serves the attached amended initial infringement claim charts and accompanying disclosures to Defendant Mitchell International, Inc. (“Mitchell”).

Audatex’s ability to complete and finalize its claim charts and disclosures has been greatly prejudiced by Mitchell’s failure to adequately respond to Audatex’s discovery requests by the deadlines specified in the Court’s Scheduling Order. Indeed, Mitchell’s systematic failure to provide complete, substantive answers or document productions in response to Audatex discovery requests is illustrated by, among other things, the fact that as of June 17, 2014—the deadline set by the Court for “substantial completion of document discovery” (*see* Scheduling Order at ¶ 14)—Mitchell had produced only 20 documents beyond its initial production under Patent L.R. 3.4 (which was also incomplete). Subsequent Mitchell productions have been limited in number and scope, and have failed to satisfy Audatex’s outstanding discovery requests. Mitchell’s deficient responses to Audatex’s requests for production and interrogatories have been the subject of presently ongoing meet and confer efforts between the parties, including an in-person meet and confer held at the offices of Audatex’s counsel on May 5, 2014.

For example, and without limitation, Audatex has repeatedly raised with Mitchell its failure to meet its discovery obligations as to the following items: (1) to provide substantive non-infringement contentions and source code excerpts to support those contentions, as well as to identify persons with relevant knowledge; (2) to identify source code excerpts describing each of the accused features and functionalities; (3) to produce documents sufficient to show the geographies in

1 which Mitchell sells and offers to sell the accused products; (4) to produce
2 documents showing the nature and use of the accused products or services by
3 Mitchell's customers; (5) to produce marketing and promotional materials related to
4 the accused products and services; (6) to produce documents and communications
5 distributed to developers or potential customers related to the accused products; (7)
6 to produce documents and communications related to instructions given to third
7 parties relating to the use of the accused products, including—for example—user
8 manuals and guides; and (8) to produce service manuals for the accused products
9 and services. Additionally, Mitchell has failed to produce all source code utilized by
10 all versions of the accused products for the operative damages period in this case (or
11 to confirm that the singular version of the accused products' source code provided
12 by Mitchell is representative of all other relevant versions).

13 These items—all of which are subject to Audatex interrogatories or requests
14 for production that have been pending for more than five months—represent only a
15 subset of the many discovery obligations that Mitchell has not fulfilled. They are
16 highlighted, however, due to their relevance to the contentions and disclosures
17 required by Patent L.R. 3.1. While Audatex has made every effort to resolve these
18 deficiencies in good faith, it has become readily apparent that Mitchell will likely
19 refuse to meet its discovery obligations until ordered by the Court to cooperate.
20 Indeed, Audatex has recently inquired with Mitchell (now on multiple occasions) as
21 to its availability for a conference call with the Court to discuss Mitchell's failure to
22 meet its discovery obligations—but Audatex has not yet received a response to its
23 inquiries.

24 Due to Mitchell's failure to meet its discovery obligations, Audatex's
25 amended claim charts and disclosures—while based on the limited amount of
26 Mitchell discovery that Audatex has been able to obtain to date, together with
27 Audatex's good faith beliefs regarding the accused products and processes based on
28 its present analysis of the information in its possession—necessarily remain

1 provisional. As such, Audatex's claim charts and disclosures are made without
 2 prejudice to supplementation or amendment as Mitchell makes additional responses
 3 and productions as required under long-standing discovery requests, which will
 4 allow Audatex to ascertain additional facts relevant to its infringement contentions.

5 Audatex further reserves the right to amend, modify, or supplement its claim
 6 charts and disclosures based on the Court's claim construction rulings, which have
 7 not yet issued. Nonetheless, Audatex's amended claim charts show infringement
 8 based on both Audatex's and Mitchell's construction of disputed terms where
 9 possible—no small task given the fact that Mitchell made numerous changes to its
 10 proposed constructions two days before these amended claim charts and disclosures
 11 were due.

12 **II. AMENDED DISCLOSURES PURSUANT TO PATENT L.R. 3.1**

13 **A. Patent L.R. 3.1(a) Disclosures**

14 Based on information presently known, Audatex asserts at this time that
 15 Mitchell has infringed and continues to infringe the following: (1) at least claims 1–
 16 29 of U.S. Patent No. 7,912,740 B2 (“the ’740 patent”); (2) at least claims 1–31 of
 17 U.S. Patent No. 8,200,513 B2 (“the ’513 patent”); and (3) at least claims 1-31 of
 18 U.S. Patent No. 8,468,038 B2 (“the ’038 patent”).

19 For the reasons discussed in Section I above, Audatex reserves the right to
 20 further amend, modify, or supplement its infringement contentions to reflect the
 21 results of discovery in this matter.

22 **B. Patent L.R. 3.1(b) Disclosures**

23 Based on information presently known, Audatex asserts infringement of every
 24 claim identified in its response to Patent L.R. 3.1(a) above (collectively, the
 25 “Asserted Claims”) by the Mitchell Accused Products, which include, without
 26 limitation, Mitchell's “WorkCenter” product suite—which features, among other
 27 things, the “WorkCenter Total Loss” and “UltraMate” (also known as “Mitchell
 28 Estimating”) products—and other related products and services sold by Mitchell.

1 For the reasons discussed in Section I above, Audatex reserves the right to
 2 amend, modify, or supplement its infringement contentions to reflect the results of
 3 discovery in this matter.

4 **C. Patent L.R. 3.1(c) Disclosures**

5 Please see Appendices A, B and C, attached hereto and incorporated by
 6 reference, for amended claim charts that identify where each element of the
 7 Asserted Claims is found within the Mitchell Accused Products.¹

8 For the reasons discussed in Section I above, these amended claim charts are
 9 provisional and Audatex's investigation is ongoing. While the contentions are based
 10 on diligent exploration by Audatex and its counsel, they reflect only the current state
 11 of Audatex's knowledge, understanding, and belief on this subject. As previously
 12 explained, Mitchell's failure to meet its discovery obligations have greatly
 13 prejudiced Audatex's ability to provide complete contentions, and Audatex will
 14 continue to investigate the all relevant facts relating to this action moving forward.
 15 As such, these claim charts, and the references cited within them, do not represent
 16 the entire universe of facts, documents, evidence, or any other materials that
 17 demonstrate Mitchell's infringement of the Asserted Claims.

18 Audatex reserves the right to amend, modify, or supplement these
 19 infringement contentions during these proceedings, including based on additional
 20 information that Audatex learns during the course of its investigation or as a result
 21 of more fulsome discovery in this matter, including information learned from
 22 documents produced by Defendant, witnesses or contentions of Defendant or third
 23 parties, the Court's claim construction, and other information. As stated above,
 24 these infringement contentions are neither intended as, nor shall in any way be
 25

26 ¹ Audatex contends that the post-Certificate of Correction language of certain
 27 claims in the '038 patent is the sole proper reading of those claims. However, for
 28 the sake of completeness, Appendix C includes infringement contentions for both
 pre- and post-Certificate of Correction versions of the affected '038 claims.